

CAUSE NO. _____

MILDRED BERRY AS GUARDIAN AND	§	IN THE DISTRICT COURT OF
AS NEXT FRIEND OF TERRELL	§	
MICHELLE THOMAS	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
UNION PACIFIC RAILROAD	§	
COMPANY	§	
<i>Defendant.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, MILDRED BERRY AS GUARDIAN AND AS NEXT FRIEND OF TERRELL MICHELLE THOMAS, Plaintiff, complaining of UNION PACIFIC RAILROAD COMPANY, Defendant, and for cause of action would respectfully show the following:

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 3 of Tex. R. Civ. P. 190.

PARTIES

2. Plaintiff, MILDRED BERRY AS GUARDIAN AND AS NEXT FRIEND OF TERRELL MICHELLE THOMAS ("THOMAS"), is an individual and resident of Harris County, Texas.

3. Defendant, UNION PACIFIC RAILROAD COMPANY ("UPRC") is a foreign rail road corporation, which at all times material to this cause of action was doing business as a common carrier by rail engaged in interstate commerce. Defendant is authorized to do business in Texas. Defendant's registered agent for service is CT Corporation system at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

4. Venue is proper in this county because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Harris County, Texas.

5. Jurisdiction is proper because this is a civil case in which the amount in controversy is within the Court's jurisdictional limits. In accordance with the requirements of Tex R. Civ. P. 479c) compelling the plaintiff to specify the damages sought, Plaintiff affirmatively pleads she seeks monetary relief of no more than \$75,000.00.

FACTUAL BACKGROUND

6. This lawsuit results from an incident which occurred on or about August 13, 2020, at the Settegast Rail Yard, in Harris County, Houston. On the aforementioned date, Plaintiff was seriously injured while at the rail yard. At the time of the incident, the property was maintained and controlled by UPRC.

7. As a result of the aforementioned dangerous and hazardous condition caused by Defendant's negligence, Plaintiff sustained personal injuries and damages as will be more fully described hereinafter.

NEGLIGENCE - UPRC

8. The occurrence made the basis of this suit and the resulting injuries and damages were a proximate caused by the negligence per se and/or gross negligence of the Defendant, for a variety of facts and omissions, including but not limited to one or more of the following:

- a) In failing to provide a reasonable and timely audible warning of a moving train;
- b) In failing to provide a reasonable and timely visual warning of an approaching train;
- c) In failing to remedy the hazardous conditions posed by this rail yard;
- d) In failing to recognize that the conditions readily apparent at this rail yard created an essentially local safety hazard;
- e) In failing to properly train and instruct its crew;
- f) In failing to maintain the rail yard;
- g) In failing to maintain adequate warning devices;

- h) In failing to provide sufficient warning;
- i) In failing to properly inspect the rail yard;
- j) In failing to clear visibility obstructions when operating the train; and
- k) In delaying to inspect or repair gates near the crossing.

9. Each and all of the above acts and/or omissions were negligence and each and all were a proximate cause of the following made the basis of this suit and the injuries and damages suffered by the Plaintiff herein.

DAMAGES - THOMAS

10. As a result of the occurrence in question, Plaintiff sustained serious personal injuries, mental anguish, and physical pain and suffering, medical expenses in the past, and impairment and disability in the past. It is believed she will also suffer legally recoverable damages in the future. Plaintiff will respectfully request the Court and Jury to determine the amount of loss she has incurred and will incur in the future, not only from a financial standpoint, but also in terms of good health and freedom from pain and worry.

11. There are certain elements of damages provided by law Plaintiff is entitled to have the jury in this case consider separately to determine the sum of money for each element that will fairly and reasonably compensate her for the injuries, damages, and losses incurred from the date of the accident in question until the time of trial of this case. Those elements of damages are as follows:

- a. The physical pain Plaintiff has suffered from the date of the occurrence in question up to the time of trial and in the future;
- b. The mental anguish Plaintiff has suffered from the date of the occurrence in question up to the time of trial and in the future;
- c. The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiff's injuries from the date of the accident in question up to the time of trial and in the future;

- d. The loss and/or reduction of earnings and/or earning capacity sustained by Plaintiff from the date of the occurrence in question up to the time of trial and in the future;
- e. The disfigurement which Plaintiff has suffered from the date of the occurrence in question up to the time of trial and in the future; and
- f. The physical impairment which Plaintiff has suffered from the date of the occurrence in question up to the time of trial.

NOTICE THAT DOCUMENTS WILL BE USED

12. Pursuant to Tex. R. Civ. P. 193.7, Plaintiff hereby gives notice all documents produced by Defendant in response to written discovery may be used at any pre-trial proceeding or at the trial of this case.

DESIGNATED E-SERVICE EMAIL ADDRESS

13. The following is the undersigned attorney's designated e-Service email address for all e-served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21a: eserve@hlalawfirm.com. This is the undersigned's only e-Service email address, and service through any other email address will be considered invalid.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays Defendant be cited in terms of law to appear and answer herein; and upon final trial hereof, Plaintiff have judgment against Defendant for all damages, punitive damages, legally recoverable pre-judgment and post-judgment interest, all costs of court, and any other further relief to which Plaintiff may show herself justly entitled.

Respectfully submitted,

HUSAIN LAW + ASSOCIATES, PC

By: /s/ Joshua R. Leske

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